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THE ANDHRA PRADESH GAZETTE

PART IV-B EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 22] HYDERABAD, FRIDAY, OCTOBER 15, 2010

ANDHRA PRADESH ACTS, ORDINANCES AND REGULATIONS Etc.

The following is the authoritative text in English Language of the Ordinance promulgated by the Governor on the 15th October, 2010 being published under article 348 (3) of the Constitution of India for general information:-

ANDHRA PRADESH ORDINANCE No. 9 OF 2010

Promulgated by the Governor in the Sixty-first Year of the Republic of India.

AN ORDINANCE TO PROTECT THE WOMEN SELF HELP GROUPS FROM EXPLOITATION BY THE MICRO FINANCE INSTITUTIONS IN THE STATE OF ANDHRA PRADESH AND FOR THE MATTERS

CONNECTED THEREWITH OR INCIDENTAL THERETO.

Whereas, Government of Andhra Pradesh has facilitated organization of the below poverty line households into self help groups (SHGs) for the purpose of their economic advancement by achieving financial inclusion through linking with the banking network;

And whereas the endeavor of the State is to protect the interests of SHGs and relieve them from the undue hardship by regulating money lending transactions by the money lending MFIs, who are providing loans to SHGs with usurious interest rates and resorting to coercive means of recovery, resulting in impoverishment and at times leading to suicides of the borrowers;

And whereas, the Legislature of the State is not now in session and the Governor of Andhra Pradesh is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor hereby promulgates the following Ordinance:-

Short title, extent and commencement.

1.(1) This Ordinance may be called the Andhra Pradesh Micro Finance Institutions (Regulation of Money Lending) Ordinance, 2010;

(2) It extends to the whole of the State of Andhra Pradesh;

(3) It shall come into force at once;

(4) It shall apply to Micro Finance Institutions whether they had come into existence before or after the commencement of this Ordinance.

Definitions.

2. In this Ordinance, unless the context otherwise requires -

(a) 'Government' means the State Government of Andhra Pradesh;

(b) 'Interest' for the purposes of the terms defined under the provisions of this Ordinance would mean a return on the amount lent by the MFI to a SHG;

(c) 'Loan' means an advance whether of money or in kind given to the borrowing SHG at interest, whether given before the commencement of this Ordinance or after such commencement and includes advance, discount, money paid for or on account of or paid on behalf of or at the request of any person, or any account whatsoever, and every agreement (whatever its terms or form may be) which is in substance or effect a loan of money or in kind given to an SHG and further includes, an agreement relating to the repayment of any such loan;

(d) 'Micro Finance Institution (MFI)' means any person, partnership firm, group of persons, including a Company registered under the provisions of the Companies Act 1956, a Non-Banking Finance Company as defined under the Reserve Bank of India Act 1934, a Society registered under the Andhra Pradesh Cooperative Societies Act 1964, or the Andhra Pradesh Societies Registration Act 2001 and the like, in whichever manner formed and by whatever name called, whose principal or incidental activity is to lend money or offer financial support of whatsoever nature to the low income population;

(e) 'Notification' means a notification published in the Andhra Pradesh Gazette and the word 'notified' shall be construed accordingly;

(f) 'Prescribed' means prescribed by rules made under this Ordinance;

(g) 'Registering Authority' means the Project Director, District Rural Development Agency for the rural areas and Project Director, MEPMA for urban areas; or any other person appointed by the District Collector to perform the functions of a registering authority under this Ordinance for such District;

(h) 'Registration' means registration granted to a MFI under this Ordinance;

(i) 'Self Help Group (SHG)' means a group of women formed on principles of self help and registered as such with the Society for Elimination of Rural Poverty (SERP) in the rural areas or Mission for Elimination of Urban Poverty in Municipal areas (MEPMA) in urban areas;

(j) 'SHG bank linkage' means provision of credit for the SHGs by the commercial banks based on a micro credit plan prepared by the SHGs for carrying out economic activities;

(k) "SHG Member" means a registered member of a SHG who intends to avail a loan through such SHG and thus a borrower under the provisions of this Ordinance;

(l) 'Society for Elimination of Rural Poverty (SERP)' is a Society formed by Government for the purpose of implementing pro-poor initiatives and thereby eliminating poverty in rural areas;

(m) Society under 'Mission for eliminating poverty in municipal areas (MEPMA)' is a Society formed by Government for the purpose of implementing pro-poor initiatives and thereby eliminating poverty in urban areas;

(n) Words used but not defined in this Ordinance, shall have the same meaning assigned to them under the relevant Acts.

Registration of MFIs.

3. (1) All Micro Finance Institutions operating in the State of Andhra Pradesh as on the date of the commencement of this Ordinance, shall within thirty days from the date of commencement of this Ordinance, apply for registration before the Registering Authority of the district specifying therein the villages or towns in which they have been operating or propose to operate, the rate of interest being charged or proposed to be charged, system of conducting due diligence and system of effecting recovery and list of persons authorized for conducting the activity of lending or recovery of money which has been lent.

(2) No MFIs, operating at the commencement of this Ordinance or intending to start the business of lending money to SHGs, after the commencement of this Ordinance, shall grant any loans or recover any loans without obtaining registration under this Ordinance from the Registering Authority.

(3) The Registering Authority shall conduct verification of the details furnished by the MFI and accord registration in such manner as may be prescribed for operation of MFIs for a period of one year, after obtaining a written undertaking from the MFI that it shall always act in conformity with the provisions of this Ordinance.

(4) Where the MFI applies for renewal of registration, an application for that purpose shall be filed by the MFI within sixty days before the expiry of the period of one year referred to in sub-section (3) and the Registering Authority shall decide either to grant renewal or refuse renewal of registration within fifteen days before the date of expiry of registration, after due verification of the performance of the MFIs in the field level and after hearing objections, if any, from the general public regarding extension of Registration.

Regi-stration of MFIs.

4. (1) Every registering authority shall maintain for the area under its jurisdiction registers of all MFIs having valid registration in such form as may be prescribed.

(2) The registers maintained under sub-section (1) shall be published in such manner and at such intervals as may be prescribed.

MFIs to obtain registra-tion.

5. (1) The Registering Authority may, at any time, either *suo moto* or upon receipt of complaints by SHGs or its members or by members of the public cancel the registration of an MFI after assigning sufficient reasons for such cancellation:

Provided that no order of cancellation of the registration shall be passed without issuing notice to the MFI intimating the facts upon which the *prima-facie* decision to cancel the registration has been taken and the MFI shall be afforded a reasonable opportunity to show cause against such notice.

Explanation:- For the purposes of sub-section (1), conviction of a MFI for an offence of violation of any of the provisions of this Ordinance shall be sufficient cause for suspension or cancellation of its registration.

(2) Pending enquiry under sub-section (1), the Registering Authority may, for sufficient reasons to be recorded, suspend the registration of an MFI.

Member of SHG not to be member of more than one SHG .

6. No member of an SHG shall be a member of more than one SHG, provided that where a member has, at the commencement of this Ordinance, become a member of more than one SHG, she shall have the option to retain the membership of one SHG and to terminate her membership in other SHGs and for that purpose, she shall issue a notice to such SHGs about her option to terminate her membership, settle and pay the amount payable to the MFIs which had lent monies to such SHGs, within a period of three months from the date of commencement of this Ordinance.

MFIs not to seek security for loan.

7. No MFI shall seek any security from a borrower by way of pawn, pledge or other security for the loan:

Provided that any such security obtained from a borrower before the commencement of this Ordinance shall forthwith stand released in favour of the borrower.

Display of rates of interest charged by MFIs.

8. (1) All MFIs shall display the rates of interest charged by them in a conspicuous place in their premises in bold letters visible to the members of the public.

(2) No MFI shall charge any other amount from the borrower except any charge prescribed in the rules for submission of an application for grant of a loan.

Maximum amount of interest recoverable on loans and discharge of loans in certain cases.

9. (1) No MFI shall recover from the borrower towards interest in respect of any loans advanced by it, whether before or after commencement of this Ordinance, an amount in excess of the principal amount.

(2) All loans in respect of which an MFI has realized from the borrower, whether before or after commencement of this Ordinance, an amount equal to twice the amount of the principal, shall stand discharged and the borrower shall be entitled to obtain refund and the MFI shall be bound to refund the excess amount paid by the borrower.

Prior approval for grant of further loans to SHGs or their members.

10. (1) No MFI shall extend a further loan to a SHG or its members, where the SHG has an outstanding loan from a Bank unless the MFI obtains the prior approval in writing in such manner as may be prescribed from the Registering Authority after making an application seeking such approval.

(2) The Registering Authority while considering such application from an MFI seeking approval as aforesaid, shall secure the following information in writing from the MFI in regard to every member of SHG namely:-

(i) name of the Borrower;

(ii) name of the SHG;

(iii) bank from which loan has been obtained by the SHG;

(iv) date of the loan granted by the bank;

(v) amount paid to the SHG by the bank;

(vi) amount due from the SHG;

(vii) fresh amount of loan sought by the SHG from the MFI;

(viii) terms of repayment proposed by the MFI;

(ix) details of due diligence including the capacity of the SHG for repayment; and

(x) such other details as may be prescribed.

(3) The Registering Authority shall, not later than fifteen days from the date of filing of such application for approval under subsection (2), cause an enquiry into the contents of the application and shall grant approval for further loan unless the Registering Authority is satisfied that the SHG and its members have passed a resolution that they have understood the conditions of the loan and terms of repayment and unless the Registering Authority is also satisfied that such further loan would generate additional income to the SHG and its members, needed for servicing the debt.

(4) No MFI shall grant loan to a member of SHG during the subsistence of two previous loans irrespective of the source of the previous two loans.

Duty of MFIs to maintain accounts and furnish copies.

11. (1) All borrowings by a member of an SHG from an MFI shall be contracted in the manner, form and format prescribed under the Ordinance.

(2) Every MFI shall keep and maintain a cash book, a ledger and such other books of account in such form and in such manner as may be prescribed.

(3) Every MFI shall,-

(a) deliver or cause to be delivered, to the borrower within seven days from the date on which a loan is made, a statement in the prescribed form showing in clear and distinct terms the amount and date of the loan and of its maturity, the name and address of the functionary of the MFI and the effective rate of interest charged;

(b) upon repayment of a loan in full, the MFI shall obtain an indelible mark on every paper signed by the borrower with words indicating such repayment and provide copies thereof to the borrower.

(4) No MFI shall receive any payment from a borrower on account of any loan without giving him a duly signed receipt for the payment.

(5) An MFI shall, on a demand in writing by the borrower, supply a copy of any document relating to a loan obtained by him, or if the borrower so requires, to any person specified in that behalf in the demand:

Provided that in respect of loans given prior to the commencement of this Ordinance, it shall be obligatory for the lender to specify if any security was accepted from the borrower.

(6) All tranches of repayment shall be made by the SHG or its members at the office of the Gram Panchayat only.

(7) MFI shall not deploy any agents for recovery nor shall use any other coercive action either by itself or by its agents for recovery of money from the borrower; and any form of coercive recovery including but not limited to visiting

the house of the borrower shall, apart being punishable under the provisions of the Ordinance, empower the Registering Authority to suspend or cancel the licence of such an MFI as provided in section 5.

Sub-missions of monthly statement by MFIs.

12. Every MFI shall submit a Monthly Statement to the Registering Authority before 10th day of every month giving therein the list of borrowers, the loan given to each and the interest rate charged on the repayment made.

Power to require production of records or documents and power of entry, inspection and seizure.

13. (1) The Registering Authority or any officer authorised by him in this behalf may, to verify whether the business of the MFI is being carried on in accordance with the provisions of this Ordinance, enter the premises of the MFI office or of any person who in his opinion is carrying on the business of lending and call upon him to produce any record or document relating to such business and every such MFI shall allow such inspection and produce such record or document.

(2) The Registering Authority may, for the purposes of sub-section (1), search the premises and seize any record and document as may be necessary and the record or document seized shall be retained only for such period as may be necessary for the purposes of examination, prosecution or other legal action:

Central Act 2 of 1974.

Provided that the provisions of sections 100 and 102 of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to such search and seizure.

(3) The registering authority or the other officer referred to in sub-section (1) shall also have power to summon and examine the MFI or any person who in his opinion is in a position to furnish relevant information.

Complaints.

14. Any SHG or its members or any member of the public can file a complaint regarding violation of the provision of this Ordinance by a MFI before the Registering

Authority and the said Authority shall enquire into the same after giving a reasonable opportunity to the MFI to show cause and pass such orders as it may deem fit including an order under section 5 of the Ordinance.

Settlement of Disputes.

15. (1) For the protection of debtors and for the settlement of disputes of civil nature between the SHG or its members on the one hand and the MFI on the other hand or between the members of the SHG and the SHG, in relation to the loans granted under this Ordinance to the SHG or its members, the State Government after consultation with the High Court, and by notification, -

(a) shall, as soon as may be after the commencement of this Ordinance, establish for every district in the State a Fast-Track Court;

(b) may establish Fast-Track Court for such other areas in the State, as it may deem necessary.

(2) The Government shall, after consultation with the High Court of Andhra Pradesh specify, by notification, the local limits of the area to which the jurisdiction of a Fast-Track Court shall extend and may, at any time, increase, reduce or alter such limits.

(3) The cases that may be filed before the Fast-Track Court shall be disposed of within a period of three months.

(4) The decree of the Fast Track Courts shall be liable to be executed in accordance with the procedure under the Code of the Civil Procedure 1908.

Central Act 5 of 1908.

Penalty for coercive actions MFIs.

16. (1) All persons who are connected with and responsible for the day-to-day control, business and management of a MFI including the Partners, Directors and the employees who resort to any type of coercive measures against the SHGs or its members or their family members shall be liable for punishment of imprisonment which may

extend up to a period of three years or with fine which may extend to one lakh rupees or with both.

Explanation:- For the purposes of this section, “coercive action” by an MFI against the SHGs or its members of their family members include the following, -

(a) obstructing or using violence to, insulting or intimidating the borrower or his family members, or

(b) persistently following the borrower or his family member from place to place or interfering with any property owned or used by him or depriving him of, or hindering him in, the use of any such property, or

(c) frequenting the house or other place where such other person resides or works, or carries on business, or happens to be, or

(d) doing any act calculated to annoy or intimidate such person or the members of his family, or

(e) moving or acting in a manner which causes or is calculated to cause alarm or danger to the person or property of such other person, or

(f) seeking to remove forcibly any document from the borrower which entitles the borrower to a benefit under any Government programme.

Provided that a person who frequents the house or place referred to in clause (c) in order merely to obtain or communicate information shall not be deemed to be using coercive action.

(2) The MFI or the persons who use coercive actions as stated in sub section (1) shall be prosecuted in accordance with the provisions of this Ordinance.

(3) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to the proceedings before a Fast Track Court, and for the purpose of the said

provisions, a Fast Track Court shall be deemed to be a Magistrate.

Penalty for carrying on business without registration.

17. All persons who are connected with and responsible for the day-to-day control, business and management of a MFI including the Partners and Directors of such MFI which carries on the business of providing loans either without obtaining registration of the MFI from the Registering Authority under section 3 or extending a further loan without prior approval under sub-section (1) of section 10 of the Ordinance or granting loan in violation of sub-section (4) thereof, shall be liable for punishment with imprisonment for a term which may extend to three years and with fine which may extend to rupees one lakh.

Penalty for contravention of the provisions of the Ordinance.

18. Any person who contravenes any provision other than section 3 and section 16 of this Ordinance, shall be punishable with imprisonment for a period of six months or with fine which may extend to ten thousand rupees or with both.

Every officer to be public servant.

19. Every officer of the Government and every person acting under the provisions of this Ordinance shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Bar of certain proceedings.

20. (1) No suit, prosecution or other proceedings shall lie against any officer or employee of the Government for any act done or purporting to be done under this Ordinance, without the previous sanction of the Government.

(2) No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is, in good faith, done or intended to be done under this Ordinance or the rules made thereunder.

Power to remove difficul-ties.

21. If any difficulty arises in giving effect to the provisions of this Ordinance, the Government may, by notification, remove difficulties by orders not inconsistent with the provisions of this Ordinance, but which appear to them to be necessary or expedient to remove such difficulty.

Power to give direc-tions.

22. The Government may, from time to time, issue such orders, instructions and directions not inconsistent with the provisions of this Ordinance and the rules made thereunder to the officers for the proper administration of the Ordinance, and such officers and all other persons employed in the enforcement of the Ordinance, shall comply with such orders, instructions and directions.

Power to make rules.

23. (1) The State Government may, by notification, make rules for carrying out the purposes of this Ordinance.

(2) Every rule made under this Ordinance shall, immediately after it is made, be laid before the Legislature of the State, if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or the session immediately following the Legislature agrees in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Annual Report on the administration of the Ordinance.

24. The Government shall prepare an annual report on the administration of this Ordinance and the same shall be placed before the State Legislature.

E.S.L. NARASIMHAN,
Governor of Andhra Pradesh.

A. SHANKAR NARAYANA,
Secretary to Government,
Legislative Affairs & Justice,
Law Department.